IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12676 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ONGC MAZDOOR SANGH

Versus

ONGC LTD.

Appearance:

MR AK CLERK for the Petitioner.
MR RAJNI H MEHTA for Respondents No. 1-2
MR MUKUL SINHA for Respondents No. 3,5
MRS KETTY A MEHTA for Respondent No. 4
MR MUKESH R SHAH for Respondent No. 6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/12/2001

C.A.V. JUDGEMENT

1. By filing this petition, the petitioner-Union, has prayed for necessary direction against respondents 1

and 2 for carrying out the verification of the members of the Unions for the purpose of determining the membership of the concerned Unions. The petitioner has also prayed that the Chief Labour Commissioner (Central), respondent No.6 herein, be directed to conduct fresh verification process through secret ballot for verifying the membership of the petitioner and respondent Nos. 3 to 5 Unions.

2. The petitioner is a Trade Union registered under the provisions of the Trade Unions Act. As per the averments made in paragraph 1 of the petition, the members of the petitioner-Union are spread over the entire region, i.e. Ankleshwar, Vadodara, Khambhat, Ahmedabad and Mehsana and that the strength of the workers in Ahmedabad is 1500 and out of that, 1000 workers are the members of the petitioner-Union. It is also further averred in the said petition that in Ankleshwar, there are 1700 workers, out of which 1200 workers are members of the petitioner-Union. So far as Vadodara is concerned, there are 350 workers, out of which 100 workers are members of the petitioner-Union and in Mehsana, there are 1500 workers, out of which 700 workers are members of the petitioner-Union.

It is further averred in the petition that so far as respondents 3, 4 and 5 are concerned, they are also Trade Unions and the ONGC has given recognition to them. The respondent No.1-ONGC is giving certain benefits to the Unions recognised by it, such as inviting the representatives of such recognised Unions in the matter of taking policy decisions, providing facilities of transportation, office, installation of telephones, giving telephone facility at the residences of the office bearers of the Union, etc. and it seems that some privileges are given to the office bearers of such recognised Union. It is averred in paragraph 3 of the petition that even though the petitioner-Union has requested the ONGC to give recognition to it, the same was not given and the office bearers of the petitioner-Union are not called for any negotiations while taking policy decision nor have they given any such facilities, which are given to the Office Bearers of the recognised Unions.

3. The grievance of the petitioner-Union is that even though the petitioner-Union is having larger membership and even though the three respondent-Unions are actually in minority, they are still enjoying the status of recognised Unions at the hands of ONGC. The say of the petitioner-Union is that the process of

verification of the membership of the Union had not taken place since long and lastly, the said verification was carried out as back as in the year 1978. If proper verification is carried out, the petitioner-Union can prove the strength of its members. It is also averred in the petition that the ONGC is deliberately sheltering the minority Unions in taking policy decision concerning the service conditions of the workmen and the consultation is made only with the Office Bearers of the aforesaid Unions, even though the petitioner-Union is having more membership as compared to the aforeaid minority Unions. It is also the say of the petitioner that if any proper verification is carried out, the fact about the membership will become clear. It is also the say of the petitioner-Union that the petitioner is having sufficient membership to get recognition as per the policy of the ONGC. In paragraph 12 of the petition, it is averred that the ONGC did not want the presence of the petitioner-Union in deciding the policy matters, and, therefore, in spite of the fact that the petitioner-Union is fulfilling the conditions laid down in the policy for recognition, the same was not granted to the petitioner-Union. The above-said action on the part of the ONGC in not verifying the membership since last 23 years is arbitrary and contrary to the provisions of Article 14 of the Constitution of India. On these and such other averments, therefore, the present Special Civil Application is filed by the petitioner-Union, challenging the action of the ONGC in not carrying out the verification to find out the membership of the concerned Unions.

Along with the petition, the petitioner has also annexed Code of Discipline containing procedure for verification of membership of unions for recognition by the ONGC.

4. The aforesaid petition is opposed by the respondents. So far as respondent No.2 is concerned, affidavit-in-reply is filed by one Mr.P.K. Das, Manager (I.R.) (Industrial Relation) with the Oil and Natural Gas Corporation Limited at the Regional Office, Vadodara. So far as respondent No.3 is concerned, affidavit-in-reply has been filed by one Bharat S. Khedawala, President of the respondent No.3-Association, by which the said Special Civil Application has been resisted by the said Union. Respondent No.5 has also filed a reply through one I.V. Tulsidharan, Vice President of the said Union. Therafter also, there are further affidavits filed by respondent No.2 as well as respondent No.5.

5. On behalf of respondent Nos. 1 and 2, Mr.R.H.Mehta, learned Advocate, has appeared and he has relied upon the affidavit-in-reply filed by one Mr. P.K. Das. It has been pointed out in the said reply that the ONGC recognised the Employees' Mazdoor Sabha, respondent No.4 for the region as a whole, excluding ONGC Ahmedabad and Ankleshwar Projects, and the ONGC Employees' Union and ONGC Employees' Association (respondent No.3) are recognised at the Project Level at Ahmedabad and Ankleshwar, respectively. It is also stated in the said reply that the O.N.G.C. invites recognised Unions for taking decisions in policy matters in respect of matters connected with unionised categories of employees and such Unions are also provided with office accommodation, telephone, etc., for day-to-day functions to maintain liaison with the management and industrial peace in the organisation. It is further stated in the said reply that there was a conflict in the past regarding recognition of the Union and that the matter in this connection is pending in this court, being Civil Application No.484 of 1992 in First Appeal No.1771 of 1992, arising from civil Suit No.2 of 1978 and that the said matter is still pending before this Court. It is denied that ONGC is sheltering the existing recognised Unions. It is also stated that the ONGC cannot interfere with the verification issue and the petitioner has approached the appropriate Authority, i.e. the Chief Labour Commissioner (Central), New Delhi for verification. It is also stated in the reply that there are number of registered Unions in the Region and it is not possible to discuss with all the registered Unions on policy matters, and hence, the petitioner-Union cannot be given the opportunity for discussion as they are not recognised.

It is also stated in the reply, more particularly in Paragraph 13 of the reply that the activities of the ONGC are spread all over India and accordingly, there are number of recognised Unions in different work centres and that any policy decision is arrived at after due discussion with the recognised Unions only. It is also stated that long term settlement has been arrived at after discussion with the recognised Unions of ONGC, including the recognised Unions of WOBU. On these and such other averments, the present petition has been resisted on behalf of the ONGC.

6. On behalf of respondent No.3-Union also, reply has been filed, as stated earlier, and the petition is resisted on various grounds. It is stated in the said reply that the ONGC has its own policy for recognition of

the Trade Unions under the Code of Discipline and that as per that policy recognition on Regional basis has been given very wide and prime importance. It is stated that respondent No.5, ONGC Employees' Union, has got the majority in Mehsana Project and, thereafter, verification of the membership has taken place. Therafter, court proceedings against the same were initiated and, ultimately, there was a stay against recognition of the ONGC Employees' Union in the Mehsana Project. It is stated that, in view of the stay order granted by the Court, no further recognition can be granted so far as Mehsana Project is concerned. It is stated that the petitioner has suppressed this fact from this Court.

Rest of the averments in the petition is also resisted in the said reply on various grounds. It is also stated in the reply that the alleged membership, which is claimed by the petitioner-Union is also not correct. It is asserted in the reply that the respondent No.3-Association and the respondent No.5-Union have always protected the rights of the workers, who are their members and have entered into genuine and reasonable settlements on behalf of the workmen. Regarding membership also, it is claimed that they are having majority membership of the workmen.

7. On behalf of respondent No.5, petition is resisted by filing affidavit-in-reply. In the said reply, it has been pointed out that the recognition of the Unions under the Code of Discipline is completely voluntary in nature, that the provisions for recognition of the Unions under the Code of Discipline clearly stated that "the Code of Discipline lays down certain criteria for recognition of unions by the Management on a voluntary basis". The recognition of any Union under the Code of Discipline is a completely voluntary process and the same is not enforceable by way of a writ petition. Recognition of Unions is based on the Code of Discipline accepted by the Management and for this purpose, any Union desirous of getting recognized, has to fulfil the criteria laid down by the said Code. Other averments in the petition are also denied by detailed averments in the affidavit-in-reply by the said Union. It is stated in the said reply that the petitioner has no legal or statutory right to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. It is also stated that membership fees of the members of the respondent No.3-Association and the respondent No.5-Union are deducted from their wages based on the individual authorization of the workers and this fact itself proves that the respondent-Association/Union command majority in

the respective Projects. It is stated in the reply that Mr.R.H. Pathan, who has filed the present petition on behalf of the petitioner-Union, was, for a long period of time, a member of the respondent No.3, ONGC Employees' Association and he was Secretary of the said Association, but after having been defeated in the election of the Union, ultimately, this petition has been filed by him through the petitioner-Union and, therefore, at the instance of such person, the Court should not entertain the petition. On these and such other grounds, the present petition has been resisted by the said Union.

8. By way of further affidavit-in-reply, respondent No.5 has pointed out that so far as "The Policy to confer recognition to Unions in ONGC", at Annexure `A' is concerned, it is only a draft policy which was circulated among the Trade Unions in ONGC and discussed in the meeting on various occasions. Neither such a policy has been adopted or declared by ONGC, as projected by the petitioner in the petition nor the recognition granted to respondent Nos. 3 and 5 was based on this policy. It is further averred in the affidavit-in-reply that respondent Nos. 3 and 5 Unions have not signed this policy and, therefore, the policy still remains at a draft stage. He also further submitted that the policy in question was never meant to be a unilateral policy of the Management. It is also stated in the said affidavit-in-reply that there is no duty cast on the Chief Labour Commissioner (Central) to undertake any verification of membership or give recognition nor has he any right, under any law, to do so. It is also further stated in the aforesaid further affidavit-in-reply that the respondent-ONGC has been withholding the recognition of respondent No.5-Union in the Mehsana Project since 1978, even after verification by the authorities and declaring the result in favour of respondent No.5-Union. The same is due to the stay order granted by this Court in Civil Application No.484 of 1992 in First Appeal No.1771 of 1992, which arises from Civil Suit No.2 of 1978, which is filed by the respondent No.4-Union.

On behalf of respondent No.2 also, further affidavit-in-reply has been filed, wherein reference is made to the "Policy of Recognition of Unions" in I.R. Manual 2001, copy of which is annexed with the said Further Affidavit-in-reply. It is stated in the said reply, on behalf of the ONGC, that secret ballot election is conducted by the Central Industrial Relations Machinery (CIRM) of the Ministry of Labour, Government of India. It is stated that pursuant to the election held in Mumbai by secret ballot in 1998, ONGC, Mumbai, vide

letter dated 20.10.1998, withdrew recognition of Petroleum Employees' Union, Mumbai, and granted recognition to ONGC (BOP) Karmachari Sangathana, Mumbai, for a period of two years. It is also stated that, in pursuance of the Notification dated 24.4.2001, election was held by secret ballot and recognition to Petroleum Employees' Union was granted for a period of two years by ONGC, by letter dated 23.7.2001. It is also further stated that after the election by secret ballot is over, the Returning Officer communicates the result to the Chief Labour Commissioner (Central), and the Secretary, Labour Ministry, Government of India, and accordingly, the Chief Labour Commissioner (Central) informs to the Head Office of the ONGC. Thereafter, ONGC Head Office informs the Regional Head for grant of recognition to the majority Union.

By filing the aforesaid affidavits-in-reply, the ONGC has cleared its position to the effect that after carrying out the verification, by way of secret ballot, and having been informed about such result by the Chief Labour Commissioner (Central), further action is taken for grant of recognition to the majority Union. Along with its further Affidavit-in-reply on behalf of the ONGC, copy of "Policy of Recognition of Unions", given in I.R. Manual, 2001 is annexed at page 145 of the compilation. On behalf of respondent No.2, by way of Annexure `IV', at page 180, the letter of the Executive Director of the ONGC, Mumbai, addressed to the General Secretary, Petroleum Employees' Union, communicating the decision of the ONGC, recognizing Petroleum Employees' Union in relation to ONGC Mumbai for a period of two years, is also placed. In the said letter, it is mentioned by the Executive Director that in pursuance of the results of the Secret Ballot undertaken for verification of membership of Unions in ONGC Limited, MRBC, Mumbai, as communicated by the Government of India, Ministry of Labour, vide their letter dated 16th July, 2001, Petroleum Employees' Union is hereby accorded recognition in relation to ONGC Limited, MRBC, Mumbai, under the Code of Discipline for a period of two years.

In view of the aforeaid, it is submitted by Mr.R.H. Mehta, learned Advocate for the ONGC, that the ONGC is following secret ballot system for the purpose of giving recognition to the concerned Union and that such verification has already been successfully carried out at ONGC Limited, MRBC, Mumbai.

9. On behalf of the petitioner-Union, it is argued by Mr.Clerk, learned Advocate for the petitioner, that

even though the petitioner-Union is having majority of membership, yet, the ONGC is not giving recognition to them. He says that no verification is carried out since last so many years and, therefore, in order to find out the current position about the membership, proper verification of the membership is required to be carried out by way of secret ballot system. Mr.Clerk further submitted that it is absolutely unjust on the part of the ONGC not to initiate any action for so many years for the aforesaid purpose, by which the Unions, who have lost the majority and who are in minority, are still enjoying the status of the recognised Unions and such Unions / their representatives are called for negotiations and are continued with all facilities, like office accommodation, telephone, etc. It is submitted that the last verification process was carried out as back as in the year 1978. He, therefore, submitted that necessary directions are required to be issued, asking the Chief Labour Commissioner (Central) to conduct fresh process of verification, for the purpose of verifying the membership of Unions and that the respondent Nos. 1 and 2 also may be directed to withdraw all the facilities given to respondent Nos.3 to 5 Unions. It is also prayed that respondent Nos. 1 and 2 should act as per the Circular dated 10.8.2000, issued by the Central Government, which is at Annexure `F' to the petition.

10. On behalf of ONGC, Mr.R.H. Mehta, learned Advocate, submitted that the ONGC is not favouring any Union, as, for ONGC, all Unions are alike and ONGC is not adopting any partisan attitude towards any of the Unions. He further submitted that in view of the interim relief granted in Civil Application No.484 of 1992 in First Appeal No.1771 of 1992, it was not possible for the ONGC to carry out the process of verification of membership of the Unions. Mr.Mehta has also further stated that, as has been done in Mumbai, the ONGC is willing to follow the same procedure for recognition of the Union in Gujarat and in case any election is held for verification of the membership of the Unions, ONGC is willing to follow the same procedure which is followed in Mumbai for granting recognition to the concerned Union, who may ultimately be able to prove its majority after verification of membership of Unions by way of secret ballot, which is required to be carried out for the purpose of verification of its membership.

11. On behalf of the contesting Unions, petition is opposed by Mr.Sinha, who is appearing for respondent Nos. 3 and 5, and Ms.Mehta, who is appearing for respondent No.4.

Mr.Sinha for respondent Nos. 3 and 5 submitted that the petitioner has no legal right worth the name and, therefore, no relief can be granted in the present petition. He further submitted that no registered Trade Union can, as a matter of right, claim that they should be given recognition by the Management. He, therefore, submitted that no such legal right is available in favour of the petitioner to claim recognition. He further submitted that if there are so many registered Trade Unions, the Management can recognize few of them in order to decide some policy questions. Mr.Sinha further submitted that no such policy, as claimed by Mr.Clerk and Mr.Mehta for the ONGC, is in existence and the reference to the policy, which is given in the petition, is merely a draft policy. Mr.Sinha also further submitted that in view of the pending proceedings, to which reference is made hereinabove, regarding First Appeal and Civil Application, if verification process is delayed, no fault can be attributed to the respondent No.3 or respondent No.5. Mr.Sinha has also further stated that the policy, which has not come into existence, cannot be enforced. He further submitted that there is already a Check Off system which is one of the modes of recognizing registered trade unions and the said system is going very well, by which membership of the Union can be verified. He also denied the argument of Mr.Clerk that the members of respondent Nos. 3 and 5 are enjoying recognition without there being any verification of their membership. It is submitted by Mr.Sinha that, as per Check Off system, membership of respondent Nos. 3 and 5 Unions is verified. He submitted that, it cannot be said that the aforesaid Check Off system has failed and that, therefore, it is required to be replaced with the secret ballot system.

12. Ms. Mehta for the respondent No.4-Union has stated that her client is agreeable so far as verification of membership is concerned, but she submitted that it should not be by secret ballot. It is submitted by her that respondeat No.4 is a recognised Union for the entire Western Region.

13. On behalf of the newly added respondent No.6, i.e. Chief Labour Commissioner (Central), Mr.M.R. Shah submitted that respondent No.6 is willing to carry out the verification of membership through secret ballot within a reasonable period.

14. I have heard all the learned Advocates in great detail and I have gone through the petition as well as

the affidavits-in-reply and the affidavit-in-rejoinder. I have also gone through the various judgments cited by the Advocates of both the sides in support of their contentions.

15. The principal question which is involved in this petition is whether ONGC should follow the policy of secret ballot system for verification of membership of the Unions for the purpose of granting recognition to a particular Trade Union in its organisation. It is also required to be noted whether the petitioner has got any legal or enforceable right to ask for such verification of membership only through the secret ballot system. It is also required to be considered whether the petitioner has got any right to ask for recognition from the ONGC.

16. It is required to be noted that so far as ONGC is concerned, it takes policy decisions in consultation with recognised unions. In the organisation, there may be so many registered trade unions, but in order to see that such decisions are taken expeditiously, without consuming time, if certain Unions, who are having larger membership, are called for, for such negotiations, it may help the organisation in taking quick decision and the say of the Union, which represents majority of the workmen, can also be taken into consideration. It is, therefore, not necessary for the ONGC to consult all Registered Unions in this behalf and, therefore, if the ONGC, which is a `State', within the meaning of Article 12 of the Constitution of India, takes any decision after consulting a particular union, which is having majority of the membership, it has to see that such Union really represents majority of the workmen of the Organisation. ONGC, being a Public Body, is supposed to act in a reasonable manner in this behalf. It is the duty of the ONGC, therefore, to see that a Union, which is called for negotiation on the basis that such Union is having particular number of members with it, is really possessing membership of majority of the members of the organisation. Therefore, while adopting the said policy of calling such recognised Union for negotiation, ONGC naturally cannot bypass the claim of a Union, which is having majority of the members with it and for that purpose, ultimately, if a decision has been taken by the ONGC to verify membership of the Union regularly, during every two years by adopting the system of secret ballot for the purpose of carrying out the verification of the membership of the Unions, it cannot be said that such action of the ONGC is not reasonable or arbitrary. In the instant case, the ONGC has already clarified its stand in its further affidavit at page 142. Reference is

also made on behalf of the ONGC about according recognition after undertaking verification of the membership of Unions through secret ballot system. As a matter of fact, if the ONGC acts in a different manner for the purpose of recognising Unions for the purpose of calling them for negotiations by selecting such Unions in an arbitrary manner, such action can be attacked on the ground of arbitrariness. However, in the instant case, the policy has been framed by the ONGC for recognition of Unions under the heading of "Code of Discipline". The membership of the Union is very much important in order to give them status of recognition and for that purpose, ONGC is bound to carry out verification process at regular intervals and in this case, it is not in dispute that every two years, the process is required to be carried out. However, Mr.Sinha submitted that the policy in question is a draft policy and it cannot be a unilateral policy of the Management. However, it is required to be noted that once the ONGC has decided to call only a recognised Union for negotiation and when such recognition is to be conferred on the Union as per the strength of members of such Union, unless there is sufficient material before the ONGC to show that such Union is having majority of the membership, it may not be possible for the ONGC to invite such Union for negotiation. Under these circumstances, there is nothing wrong if the Union is asked to undergo the verification of membership at a regular interval in this behalf. When ONGC is a Public Body and a `State', within the meaning of Article 12 of the Constitution, it is expected from it to adopt some rational policy to find out the membership of a particular Union, as, such Union is given an important right of participating in negotiation and getting so many facilities at the hands of the ONGC. The Union, which may not have adequate membership, cannot enjoy such benefit at the cost of the Union, which may have membership and support of majority workmen with them. In the instant case, it has been pointed out by the ONGC that even in Mumbai, such verification of membership was carried out by way of secret ballot and, ultimately, on declaration of results, one Union, viz., ONGC (BOP) Karmachari Sangathana, Mumbai, emerged as a majority Union by winning the election and was accordingly given recognition by the ONGC. When such privilege and right is given to the recognised union, such trade union must factually satisfy that it represents majority of the employees and such majority is required to be proved in a proper manner and not artificially as such majority character gives certain privileges and rights to the Union and they are of great importance, as, ultimately, important decisions will be

taken in consultation with such Union, which is recognised by the ONGC.

17. In Oil and Natural Gas Commission Karmachari Sanghatana v. Ministry of Petroleum, Mumbai, the Mumbai High Court in Writ Petition No.1785 of 1997, directed the Chief Labour Commissioner to adopt the method of secret ballot for the purpose of ascertaining the claim of majority membership of the Union. Ultimately, the election, as stated above, was held and recognition was given to the Union, who secured majority of votes in such election. Mr.Mehta for the ONGC has also argued that in various parts of the country, ONGC is following the said practice of giving recognition after the election through the secret ballot and that the system is working very well. As stated above, Mr.Mehta has submitted that the ONGC has no objection if direction is given to hold verification of membership through secret ballot and on that basis, strength of the Union is found out. Mr.Mehta further submitted that ONGC, being an All India Organisation, has to act fairly and in a just manner throughout the country and it may not follow different policies in different States. Therefore, considering the fact that the ONGC is a Public Authority and it is supposed to act in a fair manner and it is supposed to call for negotiation a particular representative Union, which is having sufficient strength of the workmen, and for that purpose, if any verification of membership through secret ballot is held, naturally, the Union, which is having support of the majority of the workmen can emerge as a recognised Union and the ONGC can call only such Union for negotiation and can extend whatever facilities which are given to such Union, which is having such majority. It is a sorry state of affairs that, in the instant case, since 1978, no verification is carried out by the ONGC. In my view, therefore, it would be reasonable and equitable to direct ONGC to carry out verification of membership in order to find out the total number of members, who are part and parcel of a particular Union. Mr.Sinha, appearing for respondent Nos. 3 and 5 and Ms. Mehta, appearing for respondent No.4, also submitted that they agree to go for verification of membership, but their objection is about secret ballot system for the purpose of verification of membership. According to them, the Check Off system, which is going very well, should be allowed to continue. At one point of time, Mr.Sinha also submitted that the secret ballot system may be a better mode to ascertain the membership, but he submitted that unless the policy in that behalf is finalised, the prevailing system, i.e. Check Off system, should be allowed to be continued.

However, it is required to be noted that, in fact, civil suits were also filed in Civil Court by the employees on the ground that without their willingness, deduction of membership fees was effected from their salaries towards membership of respondent No.3-Association, and Mr.Clerk has relied upon some correspondence in this behalf which is at page 63 in the compilation. Mr.Clerk has also placed on record copy of the order dated 29.9.2000 passed by the Second Extra Assistant Judge, Bharuch, in Civil Appeal No.127 of 2000, in which it has been held by the appellate Court that ONGC has no right to deduct any amount towards subscription from the members of the Union for want of any agreement in this behalf. Mr.Clerk submitted that the Check Off system itself may not be a very scientific mode in order to find out the exact membership as compared to verification of membership through secret ballot system. Apart from the aforesaid fact, ONGC itself has adopted secret ballot system at Mumbai and recognition has been given on the basis of declaration of result through secret ballot and, therefore, there is nothing wrong if ONGC adopts the same procedure in Gujarat. As a matter of fact, ONGC itself has shown willingness that they are ready to go for secret ballot system for verification of membership in Gujarat State. In that view of the matter, it is not open for the other Unions to contest the said position. Even otherwise, if ONGC has decided to follow the secret ballot system for the purpose of finding out membership, it cannot be said that the said system adopted by ONGC is in any way arbitrary and illegal and ONGC must resort to Check Off system.

18. Reference is also required to be made to a letter written by the Chief Manager (IR) to the Gr. General Manager (P&A), ONGC, Mumbai as well as to the General Manager (P&A), ONGC, Nazira and the Chief Manager (P&A), ONGC, Calcutta, which is at page 173 in the compilation. In the said letter, it is mentioned that the relevance of secret ballot was felt to reduce inter and intra-union rivalries to a great extent. The issue of holding secret ballot was, therefore, discussed in the JCM held on 26-27 March, 1996 at Hyderabad and in the meeting of the President and General Secretaries of recognised Unions on 13th July, 1996, the unions agreed to introduce the system of secret ballot for recognition of the unions. The Management was requested to circulate the Policy and on that basis, the said Policy was circulated. However, according to Mr.Sinha, no consent was given by respondents 3 and 5 and, therefore, this Policy is merely a proposed policy. However, till the policy is finalised, in some parts of the country, if ONGC has

already undertaken verification of membership through secret ballot system to give recognition to the particular union, it cannot be said that the ONGC's action is in any way arbitrary or illegal. In the further Affidavit-in-reply on behalf of respondent No.2, at page 143, it is stated in paragraph 3 that all over the work centres of ONGC, the recognition of Union is given as per the guidelines mentioned in the policy of recognition of Unions. It is also stated in paragraph 4 that secret ballot election is conducted by Central Industrial Relations Machinery (CIRM) of the Ministry of Labour, Government of India. In paragraph 5, reference about election held in Mumbai by Secret Ballot in 1998 is also given. As stated earlier, ONGC is a Public Body and it is also a `State' within the meaning of Article 12 of the Constitution and it has to act in a reasonable and fair manner and if this particular method is adopted for the purpose of verification of membership of the Unions, the said action cannot be said to be arbitrary, discriminatory or unreasonable. It cannot be said that the ONGC cannot take decision of giving recognition to the Union on the basis of verification of the membership of the Unions through secret ballot system. ONGC cannot be compelled to follow only check off system of membership even if it is found that the same may not be a useful or scientific system, as compared to secret ballot system.

19. At this juncture, reference is required to be made to the letter of the Secretary, Government of India, Ministry of Labour, dated 10.8.2000, which is in connection with recognition of Unions under the Code of Discipline. It is stated in the said letter that it has come to the notice of the Ministry that certain recognised Unions, who have got the recognition status under the Code of Discipline, have not been giving their consent to start fresh verification process to verify their membership strength for the purpose of recognition by any of the three methods, viz., check off, sampling and secret ballot. The matter has been examined in the Ministry and it is clarified that in cases where recognised Unions have already enjoyed such a status for a period of two years under the Code of Discipline, it is not necessary to consult all the trade unions and recognised Union of the membership for the purpose of recognition. All such cases may be reviewed and fresh verification may be undertaken. Specific period of recognition for any trade Union is only two years. In other words, wherever the period of two years has expired, recognition of trade union will not be valid beyond this period. It is required to be noted that

ONGC, being a Government Undertaking, is bound to follow the Instructions and Circulars of the Government. Apart from that, even on the principles of fair play, a particular Union, which is enjoying the status of recognition, cannot continue to enjoy the said status without proving its membership at regular intervals because by virtue of such recognition, certain privileges are conferred to such Unions. As stated above, since 1978, no verification is carried out by the ONGC in Gujarat and, therefore, it is high time the verification should be carried out at the earliest. As stated above, it is for the ONGC to evolve its policy as to in which manner they should consider the question of giving recognition and as to how membership is to be proved and, ultimately, if it is found by the ONGC that secret ballot system for the purpose of verification of membership of the unions is more rational and scientific, there is nothing wrong if such practice is followed by the ONGC even in the State of Gujarat. When ONGC itself has given recognition to a particular Trade Union on the basis of verification of membership of the Unions through secret ballot system in Mumbai and some other parts of the country, there is no reason why similar process should not be followed in the State of Gujarat also. ONGC, being an All India Undertaking, is supposed to act in a uniform manner. In the aforesaid view, I am of the opinion that ONGC should undertake fresh verification of the membership of the Unions for the purpose of giving recognition to the Union and without waiting for any specific consent by any other Trade Union in this behalf.

20. As such, it is not in dispute that verification of membership through the secret ballot system is more scientific and a better system compared to check off system or any other system and if the ONGC is of the opinion that it is better to adopt the said system of secret ballot for the purpose of verification of membership, in my view, it is not open for the other Unions to oppose the same, as, they can equally prove their majority by facing election and ultimately, if they are able to prove their majority, they can continue as the recognised Union with the ONGC. As stated by Mr.Mehta, in Mumbai and other parts of the country, the elections through secret ballot system have been held successfully and recognitions have been given on the basis of such election and the ONGC has not found any difficulty in undergoing the said process of giving recognition on the basis of the result of the election through secret ballot.

21. At this stage, reference is required to be made

to certain judgments cited on behalf of both the sides.

Mr.Clerk has relied upon the decision of the Apex Court in Food Corporation of India Staff Union v. Food Corporation of India and others, AIR 1995 SC 1344, wherein the Honourable Supreme Court made the following observations :-

> " ... ...
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> Collective bargaining is the principal raison d`etre of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishment, the trade union is first required to get itself registered under the provisions of the Trade Unions Act, 1956. This gives a stamp of due formation of the trade union and assures the mind of the employer that the trade union is an authenticated body; the names and occupation of whose officer bearers also become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employer should bargain, or to put it differently who should be the sole bargaining agent, has been a matter of discussion and some dispute. The `check off system' which once prevailed in this domain has lost its appeals; and so, efforts are on to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adapted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or

undertaking.

2. In the appeal at hand, the Food Corporation of India (FCI) and the unions representing the workmen have agreed to follow the "secret ballot system" for assessing the representative character of the trade unions. We have, however, been called upon to lay down as to how the method of secret ballot should be tailored to yield the correct result. Keeping in view the importance of the said matter, an order was passed as early as on November 22, 1985 to issue notice and hear all the major all India trade union organisations on this aspect. Pursuant to this notice, some trade unions' organisations have appeared; and we have heard the learned counsel representing them, so also Shri Thakur, learned senior counsel appearing for the appellant.

3. Shri Khera appearing for one of the trade unions has brought to our notice instruction No.25 of 1980 dated 18.12.1980 issued by the Office of the Chief Labour Commissioner, Ministry of Labour, Government of India. This communication styled as `Memorandum' had stated that on receipt of request either from the management or union for recognition of the union for the purpose at hand, its eligibility for recognition is first required to be examined, as stated in paragraph 3 in which mention has been made about collection of some preliminary data. After this has been done, the exercise of determination of the strength of all eligible unions is undertaken. This is decided through secret ballot. The Memorandum has laid down a detailed procedure in this regard. We have also on record a scheme which has been prepared by the appellant for assessment of representative character of the trade unions through secret ballot system. This scheme is annexed to IA No.1 of 1994.

... ..."

Relying upon the said judgment, it is argued by

Mr.Clerk that the check off system which once prevailed in the domain, has lost its appeal and so, efforts are on to find out which other system can foot the bill, and the system of secret ballot is gradually accepted.

Mr.Sinha, however, submitted that in the aforesaid matter, the Supreme Court was concerned with the procedure to be followed for the purpose of holding the election through secret ballot and that there was a consent of all the parties for holding election through secret ballot. It is submitted by Mr.Sinha that, in the instant case, there is no consent given by his Union for holding election through secret ballot system and, therefore, the aforesaid judgment is not applicable, since, in that case, election through secret ballot was to be held with the consent of all the parties.

It is no doubt true that, in the aforesaid judgment, the Apex Court was concerned with the procedure as to how election through the secret ballot system was to be held. However, as observed in the earlier part of this judgment, the ONGC itself, as an employer, has decided to give recognition to a Trade Union, which is able to prove its majority by way of secret ballot system, which is found to be more scientific and it cannot be said that while doing so, the ONGC is, in any way, acting in an arbitrary manner.

Mr.Clerk has also relied upon the decision of the Madras High Court in Madras Fertilizers Ambedkar Employees' Union v. The Chairman and Managing Director, Madras Fertilizers Ltd., Manali, Chennai & Ors., 1998 II CLR 1019. In the said case, the Management proposed to conduct election through secret ballot to test the relative strength of the Unions to select a representative body. The same was objected by the petitioner Union. The Madras High Court has held that the Management acted only in accordance with law and that it cannot be said that the Management has acted illegally in adopting the procedure as prescribed by the Supreme Court in Food Corporation of India Staff Union v. Food Corporation of India & Ors., (supra). The Madras High Court has also further held that if the petitioner therein claims that it has got a good strength, it is only proper on its part to participate in the election and establish the same.

Mr.Clerk has also relied upon the Division Bench judgment of the Andhra Pradesh High Court in Indian Airlines Ltd., New Delhi & Others v. Indian Airlines Technical Assistants Union, 1998 III L.L.J. (Supp.) 961.

In the aforesaid case, since 1959, no Union was granted recognition and that the recognition conferred on the Union prior to 1959 is being continued without reference to the respective strengths. Relying upon the judgment of the Apex Court in Food Corporation of India Staff, (supra), the Division Bench held :-

> " ... ...
>
> Collective bargaining is the principal raison d`etre of the trade unions, and if there are more than one union operating in an industry or an undertaking, the employers normally face with the situation as to with whom the negotiations should be undertaken. After referring to the demerits of the check off system, the Supreme Court observed that "the method of secret ballot reflects the correct position of the members of the Trade Unions operating in the Industry". But, however, it appears that no such exercise was conducted by the Respondents for assessing the membership of the union and consequent recognition for the purpose of entering into agreements under Industrial Disputes Act after 1959. It is quite probable the Unions which were recognised in 1959 may not have the same strength of membership as on today and some more unions must have come into existence. Therefore, it is the appropriate time that the Appellant-Management should undertake the process of recognition of the unions, under the secret ballot system as per the guidelines issued by the Supreme Court in Food Corporation of India case (supra).
>
> ... ..."

In paragraph 5 of the judgment, it has been observed as under :-

> " ... ...
>
> 5. The Trade Union Act confers certain rights on the Registered Union to ventilate the grievance of the members of its union. The management is obliged to hear them and resolve its disputes as far as possible without resorting to the conciliation and

> adjudicatory process. Though the management is not obliged to recognise the (2nd) respondent union, but at the same time it cannot refuse to hear the grievances voiced by it in respect of service conditions of its members. The learned single Judge has categorically stated that the Appellant Management being a State is expected to conduct itself in a fair and reasonable manner in the interest of Industrial peace and harmony. Therefore, recognising the union for the limited purpose of negotiation and settlement in respect of its members, cannot be construed as a recognition under the Code of Discipline. On the other hand, it improves the labour-management relations and paves the way for achieving optimum output. There is no provision under the Industrial Disputes Act or Trade Union Act, prohibiting the management from negotiating, discussing or entering into settlement with the unrecognised union. It is only in cases where the demand of unrecognised union is already seized of by the recognised union, such a demand would not be maintainable.
>
> ... ...

In the instant case also, the ONGC, being a `State', is expected to conduct itself in a fair and reasonable manner, as pointed out in the earlier part of this judgment. Apart from that, here, ONGC itself is now willing to follow the said procedure of secret ballot system for the purpose of giving recognition.

Mr.Clerk has also relied on the decision in Indian Airlines Technical Assts Union, Hyderabad v. Chairman and M.D., Indian Airlines (HQ) & Ors., 1995 I L.L.J. 578. In the said case, it has been held by the Andhra Pradesh High Court that as long as the respondent-undertaking continues to be an instrumentality of the State, there can be no unfettered discretion, since it has a duty to act fairly and to adopt the procedure which is fair play in action. It, therefore, directed that the respondent-Indian Airlines should give an opportunity to the petitioner-Union to represent its own members and discuss their grievances.

22. Mr.Sinha, on the other hand, has relied upon the

decision of this Court in Vallabh Vidyanagar Mazdoor Union v. State of Gujarat & Anr., 1999 (1) GCD 498 (Guj). In the aforesaid matter, the Union had sought for necessary writ and direction to the respondents to hold an election in Amul Dairy for the purpose of giving recognition to the petitioner-Union. In the aforesaid matter, petition was filed by the Union for a prayer that the Management should hold an election to find out as to which Union is in majority. In the aforesaid decision, it has been held by this Court (Coram : S.D. Pandit, J.) in paragraph 9 as under :-

> " ... ...
>
> 9. If the above provisions are considered then it would be quite clear it is for an industry itself to take its own decision as to whether a union of workmen is to be given recognition by an industry or not. If an industry happened to give recognition then whenever it intends to have a dialogue and negotiations with the workmen and bargain with them it must be through that recognised union. It must be also stated here that it is also fairly admitted before me that in an industry there could be more than one recognised union. There is no statutory provision to give recognition to a union of workmen and that too for only one union. It is also necessary to refer to provisions of Sec.18 of the Industrial Disputes Act. Sub-sec. (1) of Sec. 18 lays down that in case of settlement otherwise than in course of conciliation proceeding shall be binding on the parties to the agreement. Therefore, even in case of recognised union the settlement between an industry and a recognised union will be binding only on the members of that union. Even in case of settlement between the recognised union and an industry on account of any arbitration proceedings becomes binding on the non members of the recognised union as they are served with the notification under Sub-sec. 3-A of Section 10-A and are given an opportunity of presenting their case. In any settlement other than before an arbitrator, it will be binding even in case of taking place during reconciliation proceeding on the parties to the industrial

dispute. On account of the recognition of a union an obligation is created in favour of an industry as well as a union that it cannot refuse to bargain collectively and if there happened to be a refusal it will amount to an unfair labour practice. No other benefit or right is created on account of giving recognition.

... ..."

In paragraph 13, the Court has observed as under :-

" ... ...

13. Thus in view of all above discussion and the above referred decisions of various High Courts including our own High Court the Labour Commissioner cannot consider and decide the question of giving recognition to trade union and cannot issue direction to the industry to hold election for the purpose of assessing the representative capacity of the trade unions. However, if the Industry/Employer requests the Labour Commissioner that if he wants to give recognition to that trade union which is have the majority membership and that the same i.e., the assessment of membership should be assessed by him then he should hold the election by following the principles laid down in above cited Food Corporation of India Staff Association vs. Food Corporation of India, AIR 1995 SC 1344. It must be also laid down that when any trade union informs the Labour Commissioner about its birth and claims of having the majority of the membership he should inform the Industry/Employer to take note of it and ask whether the Industry/Employer wishes to give recognition or not. On getting the reply from the Industry/Employer he should inform about the reply to the trade union. If the Labour Commissioner/Deputy Labour Commissioner follows such a procedure then the Industry/Employer whenever wants to have a settlement or dialogue it will have to call such union to have the settlement binding on all.

... ..."

However, as observed in this very judgment in paragraph 13, if the Industry/Employer requests the Chief Labour Commissioner (Central) that he wants to give recognition to the trade union which is having the majority membership and that the same should be assessed by him, then he should hold the election by following the principles laid down in Food Corporation of India Staff Association (supra). In the instant case, as stated above, the ONGC has accepted in principle to give recognition to the Trade Union and such recognised union is given certain privileges, as discussed in the earlier part of this judgment. Not only that, even the ONGC itself has accepted the principle of verification of the membership of Unions through secret ballot system and the same was also followed in Mumbai, wherein, according to Mr.Mehta, the system is working very well and the said procedure, according to Mr.Mehta, has properly worked and recognition has been given to the Union on the basis of such verification of membership through secret ballot system. Even apart from that, it is observed in the aforesaid judgment of this Court that ultimately if the Chief Labour Commissioner (Central) wants to give recognition to the trade union, then the procedure as laid down by the Apex Court in Food Corporation of India Staff Association (supra) is to be followed. The aforesaid judgment, therefore, cannot be said to be of any help so far as respondents 3, 4 and 5 are concerned. If the Management decides not to give recognition to any Union, it stands on a different footing. However, in the instant case, it is not in dispute that the ONGC has followed the policy of giving recognition to a particular Union and now, we are concerned with verification process to find out membership of the Unions. In such case, therefore, verification process of the strength is required to be carried out to find out the majority status of a particular Union.

Mr.Sinha has also relied upon the Division Bench judgment given by this Court in Special Civil Application No.7481 of 1991, wherein the Division Bench has considered the prayer of the petitioners which was sought against respondent Nos. 1 and 2, i.e., against the Commissioner of Labour and the Assistant Commissioner of Labour to verify the membership of the petitioner-Union. The Court found that there was no legal obligation on the part of respondent Nos. 1 and 2 to undergo the verification process to find out the membership of the petitioner-Union. It was found that the prayer sought for in the said petition, of issuing writ of mandamus,

could not be granted.

In the instant case, as observed earlier, the ONGC itself has now taken a decision to give recognition to a Union for a period of two years on the basis of their establishing majority of membership and such verification process is to be held regularly. As stated earlier, even on behalf of respondent Nos. 3 to 5 also, it was agreed that they have no objection to undergo such verification process in order to find out the majority of the members of the Union. The dispute was mainly on the ground of system to be adopted for such verification of membership, and considering also the fact that ONGC is a `State' and it has accepted, in principle, to give recognition on the basis of verification of membership, as indicated earlier, the aforesaid judgment, on which Mr.Sinha has relied on, has no application to the facts of the present case.

23. It is also not possible for me to accept the submission of Mr.Sinha that this petition should not be entertained at the instance of the present petitioner-Union, whose General Secretary Shri R.H. Pathan was initially a member of the respondent No.3-Union and having lost the election in the said Union, ultimately, he joined the petitioner-Union and has filed this petition. Once the verification was required to be held regularly by the ONGC, it is the duty of the ONGC to initiate the verification process regularly. Since ONGC has failed to do so, appropriate relief as prayed for in the petition is required to be granted and the petition cannot be rejected simply on the ground that the General Secretary of the petitioner-Union was once an active member and an office bearer of the respondent No.3-Association.

24. Since there are some interim injunctions which are in existence regarding giving recognition, the ONGC may start the process and complete the verification of the membership of the Unions through the secret ballot system as has been done in Mumbai and for that purpose, the Chief Labour Commissioner (Central) should complete the said procedure as early as possible, preferably within a period of three months. It is clarified that after the results are received by the ONGC, it would be open for the ONGC or the concerned Union to apply before the appropriate court for modification / vacation of the interim relief. However, as long as the interim relief is in operation, the ONGC may not act any further in the matter of granting recognition, though it is submitted by Mr.Clerk that since the recognition is to remain in

existence only for a period of two years, practically, those proceedings have become infructuous as the stipulated period is over. However, in my view, if any injunction is in operation regarding recognition / de-recognition of a particular Union, ONGC cannot act contrary to the injunction if the same is in force. It is, therefore, for the ONGC to find out whether the injunction is in operation, and, if yes, to what extent. If the injunction is in operation, even after verification of the membership of the Unions, no recognition can be given on the basis of such election till injunction is either modified or vacated by the Competent Court, before whom the proceedings are pending. It is for the ONGC, therefore, to act in this behalf before undertaking the exercise of giving recognition to a particular Union on the basis of outcome of election.

25. In view of what is stated above, I am of the opinion that the ONGC should carry out verification in order to find out the strength of a particular Union and the ONGC may follow the same procedure of verification as was followed in Mumbai, i.e. by way of secret ballot system, and on receiving the result, ONGC may thereafter, follow the procedure for giving recognition and before giving such recognition, if there is an interim injunction of any court, the same should be taken care of and only thereafter, appropriate action can be taken and such recognition may not be given by flouting any injunction order which might be in force. However, since considerable time the verification of the membership of the Unions has not been done by the ONGC, the ONGC is directed to expedite the aforesaid procedure at the earliest.

26. The ONGC is directed to carry out the verification of the membership of the Unions through the Chief Labour Commissioner (Central), respondent No.6 herein. Respondent No.6 may carry out the said process of election through secret ballot and ultimately, may inform the result of such election to the ONGC and after receiving the result from the authority, the ONGC may take appropriate decision on the question of giving recognition and consequential decision of de-recognition of the concerned Union, but, as stated earlier, that is to be done only after injunction, if any, is either vacated or modified and not till such injunctions are in existence, of which reference is made hereinabove. It is for the ONGC to find out whether the injunction applies in toto or qua only a particular Region or a particular area. The ONGC may act accordingly keeping the aforesaid aspect in mind.

The petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

Respondent No.6 is directed to see that the procedure of holding election through secret ballot for the purpose of verification of the membership of the Unions is started at the earliest and, ultimately, the same may be completed as early as possible and preferably within a period of three months from today because since last so many years, verification has not taken place in the O.N.G.C.

December 10, 2001 (P.B. Majmudar, J.)

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(apj)